

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 22161 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

=====

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

=====

=

CHANDRESH BHANUPRASAD VYAS, THRO' ASHMITABEN C. VYAS - Petitioner(s)**Versus****THE STATE OF GUJARAT & 2 - Respondent(s)**

=====

=

Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1, MR MR PRAJAPATI for
 Petitioner(s) : 1,
 GOVERNMENT PLEADER for Respondent(s) : 1, 3,
 RULE SERVED BY DS for Respondent(s) : 1 - 2.

=====

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 31/01/2006****ORAL JUDGMENT**

1. The petitioner has filed habeas corpus petition under Article 226 of the Constitution of India challenging the order of detention dated 17.10.05 passed by the detaining authority under provisions

of the PASA Act. The petition has been filed on 14.11.05, when the matter was placed for hearing on 15.11.05 Rule returnable on 12.12.05. On behalf of the respondent Learned APP Mr. Pujari appears for the respondents. With the consent of the party the matter is taken up for hearing. Mr. H.R Prajapati appears on behalf of the petitioner. The petitioner has invited my attention to the order dated 17.10.05 wherein the order of detention has been passed under provisions of the PASA Act. The petitioner has also invited my attention to the order of committal dated 17.10.05 by which the petitioner has been sent to Rajkot jail. The learned advocate for the petitioner has also invited my attention to the grounds set out by the authority on 17.10.05. The ground reveals that one solitary incident has been stated and it has been stated that the petitioner has committed offence under provisions of the PASA Act.

2. The offence was committed on 6.9.05, the petitioner was storing 176 bottle Indian made foreign liquor valued at Rs 6800/-. The petitioner is involved in bootlegging activities under the provisions of section 2 (b) of the Act.

3. The learned advocate for the petitioner state that the subjective satisfaction arrived at by the authority to pass order of detention under provisions of the PASA Act only on the basis of the solitary incident where the offence is committed under the provisions of PASA is illegal because at the most it is only violative of law and order situation but not public order in support of the same the learned advocate has relied upon the judgement of Supreme Court in the case of Piyush Kantilal and Darpan Kumar for solitary incident and even judgement of this Court in Ashokkumar supra. On behalf of the respondent Mr. Pujari has tried to rely upon the order of detention. He has also relied upon the affidavit in reply filed by Mr. K.R Kaushik, Commissioner of Police. It has been stated that the authority has carefully examined the documents relating to one case registered against the detenu and those materials, it is clear that the detenu falls within the definition of "boot-legger" as defined under section 2 (b) of the PASA Act.

4. Having heard learned counsel for the parties and perused the record, in my opinion, the detaining authority has passed the order of detention without

there being any credible or cogent material about the detenu preferring bail application or his likelihood of getting enlarged on bail and subsequently continuing and indulging into such prejudicial, anti social and criminal activities again. In my view the order of detention is challenged as the same is passed by single incident where the petitioner committed offence under the PASA Act. The contention of the petitioner squarely cover the judgement of the Supreme Court in Piyush Kantilal (Supra) as well as Darpankumar (supra) and the Division Bench judgement in this behalf.

5. I have gone through the said judgements and orders and I am of the view that petition is allowed. The order of detention dated 17.10.05 is quashed and set aside. The detenu, Chandresh Bhanuprasad Vyas is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost.

6. Direct service is permitted.

(K.M.MEHTA, J)

mary//